
(2012) 05 KL CK 0024

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6453 of 2012

Ousephkutty, V. T

APPELLANT

Vs

Regional Transport Officer and another

RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 27, 27(g), 28

Citation : (2013) 1 ACC 630 : AIR 2012 Ker 172 : (2012) 3 ILR (Ker) 192 : (2012) 3 KLJ 6

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : S. Sanal Kumar, Smt. Bhavana Velayudhan and Smt. T.J. Seema, for the Appellant; G. Gopakumar, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K. Surendra Mohan

1. The complaint of the petitioner is that though he had submitted Ext. P-2 application for the grant of a Badge for the purpose of driving a transport vehicle, the first respondent has declined to even accept his application. According to the petitioner, he is the holder of a licence to drive two wheelers and three wheelers. However, he has studied only up to the 4th standard. According to him, he should have been granted a Badge and permitted to drive a transport vehicle. The counsel for the petitioner contends that as per Rule 6 of the Kerala Motor Vehicles Rules, a person who has studied up to the 4th standard can be authorized to drive a transport vehicle.

2. The learned Govt. Pleader who represents the respondents disputes the above proposition by pointing out that as per Rule 8 of the Central Motor Vehicles Rules 1989, the minimum educational qualification required for obtaining a licence to drive a transport vehicle shall be a pass in the 8th standard. In view of the above, it is submitted that the petitioner's application has been rejected for valid

reasons.

3. I have heard the respective counsel appearing for the rival parties. I have also considered the contentions made before me, anxiously.

4. The rule making power of the Central Government is conferred by Section 27 of the Motor Vehicles Act, 1988 (the Act for short). The relevant portion of Section 27 reads as follows:

27. Power of Central Government to make rules.--The Central Government may make rules:

(a) * * *

(g) specifying the minimum educational qualifications of persons to whom licences to drive transport vehicles may be issued under this Act and the time within which such qualifications are to be acquired by such persons;"

5. It is clear from the above that the power to make rules specifying the minimum educational qualifications of persons to whom licences to drive transport vehicles may be issued under the Act is vested in the Central Government. The rule making power of the State Government is contained in Section 28 of the Act. The said provision does not confer a similar power on the State Government. Therefore, the State Government does not have the power to prescribe educational qualifications of persons who may be authorized to drive transport vehicles.

6. It is in exercise of the power u/s 27(g) of the Act that Rule 8 of the Central Motor Vehicles Rules has been enacted. Rule 8 of the Central Motor Vehicles Rules reads as follows:

8. Minimum educational qualification for driving transport vehicles.--The minimum educational qualification in respect of an applicant for obtaining a licence to drive a transport vehicle shall be a pass in the eighth standard:

Provided that the minimum educational qualifications specify in this rule shall not apply in the case of--

(i) Renewal of a driving licence to drive a transport vehicle; or

(ii) Addition of another class of transport vehicle to the driving licence;

already held before the commencement of the Motor Vehicles (Amendment Rules, 2007).

The above Rule has been introduced by an amendment dated 10-4-2007.

7. Rule 6 of the Kerala Motor Vehicles Rules 1989 reads as follows:

6. Authorization to drive transport vehicles.--Application for--An application for the grant of an authorization to drive transport vehicles shall be made to the Licencing Authority in Form "LTA" and shall be accompanied by the driving

licence and an adult First Aid Certificate obtained from the St.John Ambulance Association (India) or a Certificate of competence of the applicant in first aid work in Form "FA" issued by a Medical Officer in Government Service not below the rank of an Assistant Surgeon:

Provided that no authorization to drive a transport vehicle shall be granted unless the applicant satisfies the Licensing Authority concerned that he has passed Standard IV as his minimum educational qualification:

Provided further that if the applicant is the holder of a driving licence authorizing him to drive only a light motor vehicle, no such authorization shall be granted unless he satisfies the licensing authority that he has had one year's experience in driving light motor vehicles:

Provided also that experience for a period of one year shall not be necessary in the case of an applicant for authorization to drive an autorickshaw or a motorized cycle rickshaw.

A reading of the above rule shows that the said provision deals with the manner in which applications are to be submitted for the grant of authorization to drive transport vehicles. The said Rule does not venture to prescribe any qualifications for the grant of permission to drive transport vehicles. However, the proviso enacts a prohibition that the licensing authority concerned shall not authorize a person to drive a transport vehicle unless he has passed standard IV as his minimum educational qualification. The above provision was enacted in the year 1989 long before the present Rule 8 of the Central Rules came into force. The said provision can have no application after the introduction of the present Rule 8 of the Central Rules. At any rate, it cannot supersede or set at naught, the mandate of Rule 8 of the Central Rules. The provision ought to have been suitably amended so as to conform to the Central Rules. The petitioner is not entitled to claim any benefit on the basis of the said proviso, which has become redundant, with the coming into force of Rule 8 of Central Rules. For the above reasons, I hold that the respondents were right in rejecting the petitioner's request, Ext. P-2. This writ petition is dismissed.